REMARKS

Applicants appreciate the courtesy of Examiner Christopher S. Kim on January 12-14, 2004 during several telephone conversations with one of applicants' attorneys, Renée C. Barthel. Ms Barthel contacted Examiner Kim to request clarification as to the final or non-final status of the Office Action of October 16, 2003 because the status of such action was ambiguous. In the Office Action, the Office Action Summary Form (PTOL-326) indicated that the action was "non-final", but paragraph 7 of the Office Action stated that the action was "final". During the January 12-14, 2004 conversations, the Examiner resolved the ambiguity in the status and stated that the status of the Office Action was non-final. Accordingly, applicants respectfully submit that this amendment responds to the non-final Office Action of October 16, 2003.

Claims 1-26 and 33-50 are pending in the current application. Claims 1-26 and 37 are withdrawn as directed to a non-elected invention. Claim 27-32 are cancelled. Claims 33, 34, 45 and 46 have been amended.

Applicants note and appreciate the indication that dependent claims 34, 35, 46, and 47 would be allowable if rewritten in independent form, but applicants respectfully request reconsideration of amended claims 33 and 45 over the cited references to Sesser 4,676,438 and Stoddart 632,795. Claim 33 has been amended to clarify that each stationery trough defines a fluid passageway therethrough which permits water to flow from the trough into the ground. Amended claim 45 recites at least one fluid passageway therethrough which permits water to flow from the water receiving receptacle into the ground. Applicants respectfully submit that the purposes and functions of Sesser '438 and Stoddart '795 teach away from any alleged combination of these references to achieve the irrigation assembly of either claim 33 or claim 45.

In Sesser '438, the irrigation assembly does not define any structure for a trough. Sesser discloses furrows dug into the ground by a plow. These furrows are part of the ground itself. Such furrows do not define any structure which is positioned at least partially above the surface of the ground. Sesser's furrows further do not have at least one wall which is adapted to engage a surface of the ground, in contrast to claim 33. The walls of Sesser's furrow cannot engage a surface of the ground because the furrow walls are formed by the ground itself and thus the ground cannot engage itself. Sesser '438 clearly does not disclose or suggest the features of claim 33 because Sesser lacks a structure for a trough apart from the ground.

Moreover, Sesser '438 teaches away from any structure between the assembly and the ground. Sesser's assembly is used to irrigate the ground directly to limit water loss due to evaporation (Col. 1, lines 45-53). Sesser's teachings and suggestions would discourage any additional structures on the ground for receiving water. Sesser describes the advantage of reducing evaporation loss by application of "water directly into furrows" (see Col. 1, lines 35-45). Such application necessarily requires no intervening structures at all between the spray head of the drop tube and the ground, in contrast to claim 33. Sesser thus teaches away from any structure being positioned at least partially above the ground to receive the water and having at least one wall which is adapted to engage a surface of the ground.

It would not be obvious to combine Sesser '438 with Stoddart '795. In Stoddart '795, a distributor has pegs b which are completely closed at the bottom of the distributor. There is no way for the water to flow through the distributor. The pegs b are closed at their bottom edges and thus do not provide any outlet for liquid flow. Water must enter and exit through the

opening at the top. As a result, liquids are only distributed from Stoddart's distributor by overflowing the vessel a. Any water below the top of the distributor remains in the distributor.

It would not be obvious to place Stoddart's distributor in Sesser's 438 irrigation system. Stoddart's distributor would only irrigate crops if enough liquid was deposited to overflow the top of the distributor. All liquid remaining in the distributor would fail to irrigate anything and would be subject to evaporation and wind drift. This is not an efficient use of water. Stoddart's use is contrary to the purpose and function of Sesser '438. Also, water that is lost due to evaporation or wind drift from Stoddart's distributor would have to be replaced at each dispensing event prior to any irrigation of crops. The purpose and function of Sesser clearly teaches away from such wasteful use of water and thus teaches away from such combination of references.

The purpose and function of Stoddart's distributor is also undermined if the alleged combination is made. Stoddart's distributor teaches that surface tension allows the water to flow over the top and down the sides of the distributor to the pegs b where the surface tension creates fine streams of liquid. If Stoddart's distributor were placed in the furrows of Sesser's irrigation assembly, then obviously the ground or other structure would contact the sides of the distributor. The contact between the ground and the distributor breaks the surface tension of the water. Water no longer flows to the pegs b to create fine water streams. Therefore, the teachings of Stoddart also discourage any alleged combination.

For the reasons stated above, applicants respectfully submit that Sesser '438 and Stoddart '795 are not properly combinable in the absence of the teaching supplied by applicant's specification. There is absolutely no motivation in either reference to make the alleged

combination. Sesser '438 teaches away from any structure apart from the ground for receiving water. Stoddart '795 fails to teach or suggest a trough having the claimed features and is completely unsuitable for use in agricultural irrigation.

One would not be motivated to use Stoddart's distributor in the furrow irrigation system of Sesser. Stoddart and Sesser teach purposes and functions which are opposed to one another. The placement of Stoddart's distributor in Sesser's irrigation system is wasteful and contrary to the water conservation purposes touted by Sesser's irrigation system. (Column 1, lines 35-42). For this reason, one skilled in the art would not be motivated to combine these references without applicant's teachings. Claim 33 therefore should be allowed.

In addition, applicants respectfully submit that claim 33 should be allowed for another reason. Even the alleged combination of references does not teach or suggest a trough which defines a fluid passageway therethrough for permitting water to flow from the trough into the ground, as recited in claim 33. The pegs b of Stoddart's distributor are completely closed off to any water flow whatsoever. Therefore, Stoddart's distributor fails to define a fluid passageway which permits water flow through the distributor, in contrast to claim 33.

It is further respectfully submitted that it would not be obvious to modify the alleged combination. In fact, Stoddart '795 teaches that flow of water occurs outside the distributor. Stoddart '795 works to deliver liquids onto the filter beds using surface tension along the exterior sides of the distributor to the pegs b. There is no motivation to modify Stoddart's distributor to provide a fluid passageway therethrough, in contrast to claim 33.

Independent claim 45 is also respectfully believed to be allowable for the same reasons as discussed above relative to claim 33. Sesser ' 438 fails to teach or suggest a water

receiving receptacle apart from the furrows dug into the ground, and consequently, also fails to teach or suggest any water receiving receptacle which has at least one wall. Stoddart '795 is not properly combinable with Sesser '438 because of the contrary purposes and function set forth in each of the references. Even if the references are so combined, Stoddart '795 fails to teach or suggest any fluid passageway through the distributor, in contrast to claim 45.

In addition, claim 45 is respectfully submitted as a generic claim. Claim 45 reads on each of the irrigation assemblies disclosed in Figures 1-14. Claim 45 is not specifically limited to the embodiment shown in Figures 12-13. Such election was required by applicants prior to substantive examination of the claims in the event no generic claim is allowable. Applicants respectfully believe claim 45 is allowable and, accordingly, request that claims 48 and 49 not be considered as withdrawn from this application.

Dependent claims 34-36, 38-44 and 46-50 are respectfully believed to be allowable over the cited references for the same reasons as stated above to their respective independent claims. In addition, certain dependent claims are believed to be allowable on an independent basis.

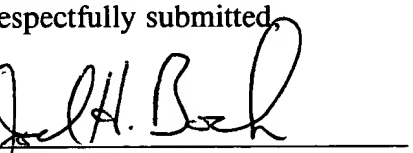
Claim 34 is respectfully believed to be patentable over the alleged combination of Sesser '438 and Stoddart 632,795. Claim 34 includes a plurality of underground drains adapted for penetrating the ground. Claim 34 has been amended to clarify that each of the plurality of underground drains defines at least one opening, which opening defines at least a portion of the fluid passageway through the trough for permitting water flow through the trough. As noted above, Sesser '438 and Stoddart '795 are not properly combinable to render claim 34 obvious.

Even if such combination is made, neither reference teaches or suggests any structure which is similar to the plurality of underground drains, as recited in claim 34. Stoddart's pegs b do not define a structure which is suitable for penetrating the ground. In fact, the surface tension along the pegs b is broken if the pegs penetrate the ground. Stoddart's pegs b also lack any opening for permitting water flow through the trough. Thus, in contrast to Examiner's assertions in the Office, Stoddart fails to disclose or suggest any underground drain, and claim 34 should be allowed.

Claim 46 is also distinguishable on its own basis for similar reasons as discussed above relative to claim 34. Amended claim 46 recites that the water receiving receptacle includes at least one underground drain which is adapted for penetrating the ground. Such drain defines at least one opening, which opening defines at least a portion of one fluid passageway for permitting water flow through the water receiving receptacle. The subject matter of claim 46 is therefore respectfully believed to be allowable for similar reasons discussed above as to claim 34.

Claims 33-36 and 38-50 are believed to be distinguishable over the cited references. Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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